

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

PAULA LINGENFELTER,

Plaintiff,

v.

CIVIL ACTION NO: 3:20-cv-00649
(Previously Cabell Co.
Civil Action No.: 20-C-198)

**SENIOR HOME CARE, LLC
d/b/a HOME CARE ASSISTANCE,**

Defendant.

**DEFENDANT SENIOR HOME CARE, LLC D/B/A HOME CARE
ASSISTANCE’S NOTICE OF REMOVAL**

Comes now Defendant Senior Home Care, LLC d/b/a Home Care Assistance (“Home Care”), by counsel, Charlotte A. Hoffman Norris, Sarah A. Walling, Kevin C. Kidd, and Jenkins Fenstermaker, PLLC, and pursuant to 28 U.S.C. §§1331, 1367, 1441, and 1446 respectfully files this Notice of Removal of a certain action pending in the Circuit Court of Cabell County, West Virginia. Home Care denies the allegations contained in the Complaint and files this Notice without waiving any defenses, exceptions, or obligations that may exist in its favor in state or federal court. In support of this Notice of Removal, Home Care states the following:

Background

1. On or about July 1, 2020, Plaintiff Paula Lingenfelter (“Plaintiff”) filed suit against Home Care in the Circuit Court of Cabell County, West Virginia, Civil Action No. 20-C-198, styled *Paula Lingenfelter v. Senior Home Care, LLC d/b/a Home Care Assistance* (The “Civil Action”).

2. Home Care was served with a copy of the Summons and Complaint in the Civil Action on September 1, 2020.

Procedural Basis for Removal

3. Removal is timely pursuant to 28 U.S.C. § 1446(b) insofar as this Notice of Removal is filed within thirty (30) days of receipt of the Complaint by Home Care.

4. Venue is proper as this Court is the District Court overseeing the assignment of Cabell County, West Virginia, where the Civil Action is currently pending. L.R. Civ. P. 77.2.

5. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Home Care, along with a certified copy of the state court docket sheet are attached hereto as *Exhibit A*.

6. Pursuant to 28 U.S.C § 1446(d), a copy of this Notice of Removal, along with a Notice of filing Notice of Removal to state court is being sent to the opposing party and filed with the Clerk of the Circuit Court of Cabell County, West Virginia. A copy of the Notice of filing of Notice of Removal to state court is attached hereto as *Exhibit B*.

Substantive Basis For Removal (Federal Question Jurisdiction)

7. This case involves a question of federal law. Plaintiff's Complaint is centered upon her use of the Federal Family and Medical Leave Act ("FMLA"), which is cited frequently throughout the pleading. Plaintiff alleges one or more violations of the FMLA, 29 U.S.C. § 2601, *et seq.* which raise a federal question sufficient to confer original jurisdiction pursuant to 29 U.S.C. § 1331.

8. Count I of Plaintiff's Complaint, entitled "Termination in Interference with Plaintiff's Rights under the Family and Medical Leave Act of 1993," references FMLA regulations on protected conduct, eligibility requiring 1250 hours worked and one year of employment, and Plaintiff allegedly being terminated by Home Care because of her use of FMLA leave. Compl. at ¶¶29-38, attached hereto as Ex. A.

9. Count II of Plaintiff's Complaint, entitled "Retaliation for Exercising Rights and Engaging in Protected Conduct under the Family and Medical Leave Act of 1993," alleges Plaintiff was approved for FMLA leave, was terminated weeks after this approval, and that this termination was in bad faith, malicious, reckless and purposefully indifferent to Plaintiff's FMLA rights. *Id* at ¶¶39-44.

10. The Complaint alleges violations of Plaintiff's rights under FMLA. Consequently, Plaintiff's claims arise under the "Constitution, laws, or treaties" of the United States within the meaning of 28 U.S.C. § 1331. This action may be removed to this Court without regard to the citizenship or residence of the parties or the amount in controversy.

11. Federal "district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C § 1367(a).

12. Count III of Plaintiff's Complaint asserts a claim for "Disability Discrimination." Count IV asserts a claim for "Retaliatory Discharge in Violation of West Virginia Public Policy." Count V asserts a claim for "Discrimination Based on Age in Violation of the West Virginia Human Rights Act." Count VI asserts a claim for "Violation of Wage Payment and Collection Act." These claims are based upon the same facts and circumstances alleged by Plaintiff in support of her federal FMLA claims and thus, this Court may exert supplemental jurisdiction over all asserted state law claims.

WHEREFORE, Defendant Senior Home Care, LLC d/b/a Home Care Assistance files this Notice of Removal so that the entire state court action under Civil Action No. 20-C-198 currently pending in the Circuit Court of Cabell County, West Virginia, shall be removed to this Court for all further proceedings.

**SENIOR HOME CARE, LLC
D/B/A HOME CARE ASSISTANCE,**

By Counsel

/s/ Sarah A. Walling

Charlotte A. Hoffman Norris, Esq. (WVSB #5473)

Sarah A. Walling, Esq. (WVSB #11407)

Kevin C. Kidd, Esq. (WVSB #13642)

Jenkins Fenstermaker, PLLC

P.O. Box 2688

Huntington, West Virginia 25726-2688

Telephone : 304-523-2100

Facsimile : 304-523-2347

chn@JenkinsFenstermaker.com

saw@JenkinsFenstermaker.com

kck@JenkinsFenstermaker.com

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

PAULA LINGENFELTER,

Plaintiff,

v.

CIVIL ACTION NO: _____
(Previously Cabell Co.
Civil Action No.: 20-C-198)

SENIOR HOME CARE, LLC
d/b/a HOME CARE ASSISTANCE,

Defendant.

CERTIFICATE OF SERVICE

I, Sarah A. Walling, counsel for Defendant, certify that a true and correct copy of the foregoing “*Defendant Senior Home Care, LLC d/b/a Home Care Assistance’s Notice of Removal*” was electronically filed with the Clerk of the Court on this the 1st day of October, 2020 using the CM/ECF system and mailed to the following individual by depositing the same in the U.S. Mail, postage prepaid, this 1st day of October, 2020:

Hoyt Glazer, Esquire
Glazer Saad Anderson L.C.
The Huntington Central Building
320 9th Street
Huntington, WV 25701
Counsel for Plaintiff

/s/ Sarah A. Walling
Charlotte A. Hoffman Norris, Esq. (WVSB #5473)
Sarah A. Walling, Esq. (WVSB #11407)
Kevin C. Kidd, Esq. (WVSB #13642)

JENKINS FENSTERMAKER, PLLC
Post Office Box 2688
Huntington, West Virginia 25726-2688
Phone: (304) 523-2100
Fax: (304) 523-2347